IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

CRP.No. 2743 of 2001

(IA. 6511 /2000 IN OS.90/1994 of ADDL.M.C.,KOZHIKODE-I)

REVN. PETITIONER/PETITIONER/1ST RESPONDENT:

N.K. RAMAKRISHNA PANICKER,
S/O. VELAYUDHA PANICKER,
FEROKE AMSOM, NALLOOR DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS/RESPONDENTS/PETITIONERS & R2 AND R3:

1. V.K. INDIRA, D/O. VELAYUDHA PANICKER,
NADUVATTOM AMSOM DESOM, KOZHIKODE TALUK.

2. E.K. VINODINI, D/O. VELAYUDHA PANICKER,
IRIMBUZHI AMSOM DESOM, MALAPPURAM DISTRICT.

3. V.K. SAROJINI, W/O. P.K. GANGADHARAN,
VELIPRAM AMSOM DESOM.

4. K.K. SANTHAKUMARI, D/O. P.K. GANGADHARAN,
THOLOOR AMSOM DESOM, THRISSUR TALUK.

BY ADV. SRI.JACOB ABRAHAM
ADV. SMT.KOCHUMOL KODUVATH

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 23/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.P.No. 2743 OF 2001

ORDER ON C.M.P.NO. 5820 OF 2001 IN C.R.P.No. 2743 OF 2001

DISMISSED.

23.11.2007 SD/- K.T. SANKARAN, JUDGE.

/TRUE COPY/

P.A. TO JUDGE.

K.T. SANKARAN, J.

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C.R. P. No. 2743 OF 2001

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Dated this the 23rd November, 2007

O R D E R

The revision is filed by the first defendant in O.S.No. 90 of 1994 on the file of the court of the Munsiff, Kozhikode-II, challenging the order dated 10th August, 2001 in I.A.NO. 6511 of 2000 in I.A.No.4614 of 1996. The suit was one for partition. I.A. 4614 of 1996 was filed for passing final decree.. A Commissioner was appointed to divide the property and he submitted a report, plan and account. It is submitted by the revision petitioner that as per order in I.A. 181 of 1999, the report submitted by the Commissioner was remitted to him with certain directions. The Commissioner submitted a report thereafter. I.A.No. 6511 of 2000 was filed by the revision petitioner/first defendant to set aside the report, plan and account. A contention was raised by the petitioner that the Commissioner has not complied with the directions issued by the court in I.A.No.181 of 1999. It is also pointed out that the revision petitioner/first defendant has purchased the shares of the second defendant and thus he is now holding eight out of ten shares in item 1, and three out of five shares in item 2. The petitioner contended that he is an astrologer by profession and it is just and proper to allot the properties surrounding the 'Kalari' towards his share.

It is also pointed out that the assignment deed executed by the second defendant in his favour was produced by the petitioner before the Commissioner.

2. The application for setting aside the report was resisted by the plaintiffs. They contended that the allotment made by the Commissioner is just and proper.

3. The Commissioner was examined as C.W.1. The court below held that the allotment made by the Commissioner is proper and no inconvenience is caused to the revision petitioner/first defendant. The contention raised by the petitioner that the Commissioner did not inspect the property after remittal was answered by stating that there was no need for inspection by the Commissioner for changing the allotment.

4. Learned counsel for the petitioner submitted that the allotment as is now made by the Commissioner would cause great injustice and prejudice to him. Learned counsel for the respondents submitted that the order passed by the court below is just and proper.

5. The final decree proceedings are pending. At the time of hearing of the final decree application, all parties are entitled to put forward their respective contention before the court below. The petitioner would be free to point out that the allotment made by the Commissioner is not just and proper. If the court finds merit in such contention, appropriate modification in the allotment can be

made and even the Commissioner can be directed to carry out such modification by issuing appropriate directions. I make it clear that the observations made by the court below in the order impugned need only be taken as reasons stated for rejecting the prayer for setting aside the Commissioner's report, plan and account. Those observations and conclusions need not be taken as final for considering the submission of the first defendant that the allotment requires some modification or adjustment or alteration. The order impugned will not preclude the court below from considering such objections and from issuing appropriate directions while considering the final decree application. With these observations, I am of the view that the revision can be disposed of without interfering with the conclusion arrived at by the court below that the Commissioner's report , plan and account need not be set aside.

The Civil Revision Petition is disposed of with the above observations and directions.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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C.R.P. No. 2743 OF 2001

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Dated this the 23rd November, 2007

O R D E R